



CITY OF KIRKLAND

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
123 FIFTH AVENUE, KIRKLAND, WA 98033
425.587.3225 - www.kirklandwa.gov

To: Sue Tanner, Hearing Examiner

From: Craig Salzman, CCEO
Code Enforcement Officer

Date: December 13, 2011

Subject: HEARING FOR BRIAN AND LEANN WHITE, NOTICE OF CIVIL VIOLATION
FOR VIOLATION OF THE REQUIRED YARDS REGULATIONS, KZC
115.115.3.c, LOCATED AT 8028 126th Ave NE; PLANNING DEPARTMENT
FILE NO. COM11-00230

I. INTRODUCTION

City of Kirkland staff ("staff") offer this staff report with regard to the above-referenced Code Enforcement matter.

II. ISSUES PRESENTED

- A. Does the canopy installed on the east rear property line of the subject property violate the Required Yards section of the KZC 115.115.3.c?
- B. Is the owner responsible for removing the canopy from the Required Yard?
- C. Is this structure eligible for a modification under KZC 115.115.3.m?
- D. Is the owner responsible for fines of \$100.00 per day until compliance is confirmed by Planning Department Staff?

III. STATEMENT OF FACTS

The subject property is located at 8028 126th Ave. NE and is zoned RSX 7.2. The applicable Use Zone Chart is found in KZC 17.10.010. This zone requires 20 foot required yard on the front, 5 feet on each side, and a 10 foot required yard on the rear. This is a corner lot and only one front yard must be 20 feet. The other front yard may be regulated as a side yard with a minimum of 5 feet. The applicant may select which front yard shall meet the 20 foot requirement. In this case the two yards in question are a 5 foot side yard on the south and a 10 foot rear yard on the east.

On August 22, 2011 the City received a complaint regarding a canopy structure in a required yard. The open-sided structure is 12 feet long, 10 feet wide, and 8 feet tall. Officer Salzman investigated the situation and after a site visit and telephone

conversations with the owner and the complainant discovered that the complaint was valid although aspects of the complaint were not factual as to the existing conditions at the site. Mr. Salzman requested the owner move the structure to comply with the setback related to the south property yard which is adjacent to the complainant's property. Upon completion of that relocation Mr. Salzman closed the case on September 20, 2011 as being in compliance.

The complainant was dissatisfied with the case being closed and after further evaluation the case was reopened to investigate a violation of the rear or east required yard. After discussions with the owner a Notice of Civil Violation (Exhibit B) was issued on October 14, 2011 and a hearing was scheduled.

After the hearing was scheduled Planning Staff noted the language in the KZC 115.115.3.m which might allow the structure to remain in the current location if considered a shed. The complainant was adamant that this section of the Code should not apply. She also stated that she would be unable to attend the hearing, but would supply a statement and exhibits to be considered by the Hearing Examiner (Exhibit D). The property owner has also addressed this code section in his statement (Exhibit C).

IV. LEGAL ANALYSIS

A. Does the canopy installed on the east rear property line of the subject property violate the Required Yards section of the KZC 115.115.3.c?

KZC 115.115.3 regulates required yards, subsection c states:

- c. An improvement or structure that is not more than 18 inches above finished grade may extend not more than five (5) feet into a required yard.

As this structure exceeds 18 inches in height it is in violation of this section of the KZC. In having the owner move the structure away from the complainants' yard (south side), by more than 5 feet, Mr. Salzman originally believed that this would resolve the issue because this was the yard adjacent to the complainant's property. This did not remove it from the 10 foot setback on the rear yard (east side), however. When Mr. Salzman contacted the owner adjacent to the rear property line he did not object to the structure being within the White's rear yard setback. Regardless, after further evaluation, the Notice of Civil Violation was prepared to address the canopy structure still remaining within this required rear yard of 10 feet.

B. Is the owner responsible for removing the canopy from the Required Yard?

The owner is responsible for removing the canopy outside of the required 10 foot rear yard setback unless a modification is approved.

C. Is this structure eligible for a modification under KZC 115.115.3.m?

Websters Dictionary defines a shed as a single storied building with one or more sides unenclosed. Being open sided, it could arguably have less impact than an enclosed structure. While initially staff did not consider the canopy a shed, after reviewing the definition, it seems reasonable to consider the section which can allow a shed in a setback yard if the code criteria are met. Staff is requesting the Hearing Examiner include in the decision whether or not the structure can be considered a shed and subject to this section.

KZC 115.115.3.m states (staff comments in italics):

m. For uses in low density residential zones, and for residential uses in other zones, the applicant may request a modification to locate no more than one (1) storage shed in a required yard; provided, that no storage sheds are allowed in a required front yard. The Planning Official may approve a modification if:

1) The proposed structure is no more than eight (8) feet tall; and

The structure is 8 feet tall at the peak and complies with this criterion.

2) The maximum length of the side of the proposed structure parallel to the affected property line(s) shall not exceed 10 feet. The structure shall not exceed 120 square feet in total area; and

The canopy has the longer dimension parallel to the affected property line and does not meet this aspect of this criterion unless it is turned. It is 120 square feet in area or less.

3) No reasonable alternative location may be found due to special circumstances regarding the size, shape, topography, or location of the subject property or the location of legal or legally nonconforming preexisting improvements of the subject property; and

The owner has stated that to move the structure would disrupt use of the sportcourt which is immediately west of the structure. The deck and sportcourt were preexisting.

4) The modification will not create a significant negative impact on the character of nearby residential properties.

The neighbor to the east who would be affected by the structure located in the setback yard told Mr. Salzman that it would not concern him.

If approved, the Planning Official may require the storage shed to be screened by a solid screening fence or dense vegetation.

The decision of the Planning Official in approving or denying a modification for a storage shed may be appealed using the appeal provision, as applicable, of Process I, KZC [145.60](#) through [145.110](#).

D. Is the owner responsible for fines of \$100.00 per day until compliance is confirmed by Planning Department Staff?

KMC 1.12.040.E Monetary Penalty, establishes the monetary penalty for each violation per day. If the Examiner determines the canopy must be moved, then the owner is responsible for the fines until compliance is confirmed by staff.

V. CONCLUSION

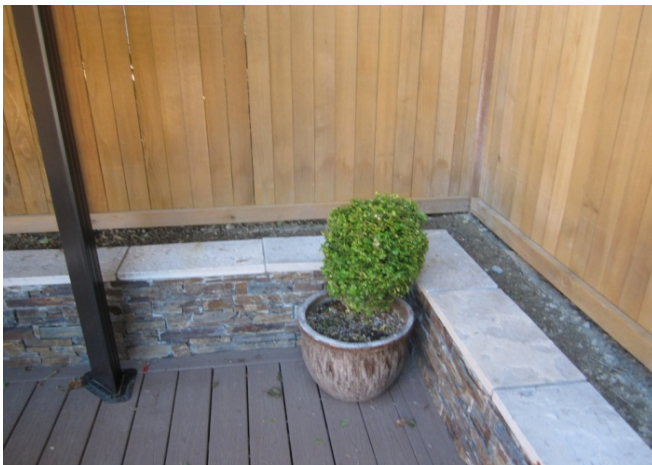
The canopy structure is located in the required rear yard and because it is taller than 18 inches is in violation of the Zoning Code. The Notice of Civil Violation was issued to correct this situation.

However, since the Notice was prepared and issued, the KZC section that allows a shed in a required yard has been reviewed. Staff can support a decision that considers the structure a shed if it can be turned so that the short side is parallel to the property line. If the Examiner agrees, then there would be no fine. If the Examiner decides that the shed must be moved outside the required yard, then the owner should be responsible for the fines until compliance is confirmed by staff.



EXHIBITS

- A. Staff Report
- B. Notice of Civil Violation dated Oct. 14, 2011
- C. Information Received Dec. 12, 2011 from Brian White
- D. Information Received Dec. 12, 2011 from Yvonne Grossrieder





CITY OF KIRKLAND

Planning and Community Development
 Code Enforcement
 123 5th Avenue, Kirkland, WA 98033
 (425)587-3225 – Fax: (425)587-3232
www.kirklandwa.gov

NOTICE OF CIVIL VIOLATION

(Kirkland Municipal Code 1.12.040)

Date: October 14, 2011	Case Number: COM11-00230 ENF 11-206
<u>Property Owner Information</u>	<u>Violation Information</u>
Name: Brian and Leann White	Site Address: 8028 126 th Ave NE
Address: 8028 126 th Ave NE	City, State, Zip: Kirkland, WA 98033
City, State, Zip: Kirkland, WA 98033	Parcel #: 742440-0010
Code Provision(s) Violated:	115.115.3.c
Description of Violation:	Placing a canopy structure that exceeds 18 inches in height within the rear required yard.
Inspection Dates:	September 20, 2011
Date(s) of Violation:	September 20, 2011 and continuing until corrected
Person(s) Responsible For:	Brian and Leann White
Request for Voluntary Compliance:	September 29, 2011
Corrective Action and Compliance Date:	December 15, 2011
Hearing Date:	December 15, 2011

HEARING NOTICE: On December 15, 2011 at 9:00 A.M. the Kirkland Hearing Examiner shall hold a hearing in City Council Chambers, 123 5th Avenue, Kirkland, WA, 98033, 2nd floor, Kirkland City Hall relating to the above issued Notice of Civil Violation. If the required corrective action is completed AND written approval is obtained from the issuing party at least 48 hours prior to the hearing, the hearing shall be cancelled and no monetary penalty assessed. If you choose NOT to complete the required corrective action by that time, the hearing shall continue as scheduled.

HEARING EXAMINER HEARING: At the hearing, staff may request the Examiner to issue an order assessing the monetary penalties in the amounts described below. All costs and expenses of abatement incurred by the City pursuant to KMC 1.12.060(D) and monetary penalties in the amount per day for each violation as specified in KMC 1.12.040(E) may be assessed against the person responsible for the civil violation as listed above.

- ☒ First violation..... \$100.00
- ☐ Second violation \$200.00
- ☐ Third violation \$300.00
- ☐ Additional violation in excess of three \$500.00

Payment of a monetary penalty pursuant to Chapter KMC 1.12.040 does not relieve the person to whom the Notice of Civil Violation was issued of the continued duty to correct the violation.

ISSUED BY: Craig Salzman, CCEO, Code Enforcement Officer
 Phone: (425)587-3289 - Email: csalzman@kirklandwa.gov

METHOD OF SERVICE:

- ☒ Hand Delivered ☒ Postal Mail ☒ Posted at Subject Property Site



(CASE #COM11-00230 ENF 11-206)

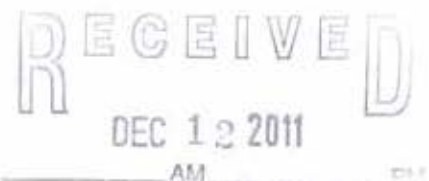
REQUEST FOR MODIFICATION

In response to the City of Kirkland Notice of Civil Violation (Kirkland Municipal Code 1.12.040), we have prepared the following package for the December 15, 2011 hearing.

Table of Contents

Page 1	Introduction and Table of Contents
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Brian and LeAnn White
8028 126th Ave NE
Kirkland, WA 98033
425-827-0156



KIRKLAND CITY CODE-Miscellaneous Use Development and Performance
 (115.115 Required Yards-section m)

PER CODE:

For uses in low density residential zones, and for residential uses in other zones, the applicant may request a modification to locate no more than one (1) storage shed in a required yard; provided, that no storage sheds are allowed in a required front yard. The Planning Office may approve a modification if:

Pt. 1) There is no City code specific to sun shelters; therefore, the sun shelter was deemed a "structure" per C. Salzman, stating it fits within the definition of a storage shed and applicable to this section of the code for purposes of this review.

1) The proposed structure is no more than eight (8) feet tall; and

Pt. 2) The structure has (4) 6'5" posts and reaches a maximum height of 8 feet at the roof peak. The majority of the structure is less than 7 feet in height. The peak of the structure is only 1 foot above the fence line.

Reference Photos #1-3, pages 7-9 (Photos from Whites facing Complainant)

NOTE: The natural screening, particularly evident in photo #2 along the complainant's northeastern corner of property, allows only a small portion of the structure to be barely visible from her yard or house above the fence line.

Per Case Activity Log (reference a, Exhibit C, page 18), the complainant "was adamant that the canopy was 4 feet above the fence".

Per her original complaint, reference Exhibit D, page 21, she described it as 15' high, almost double it's actual height.

2) The maximum length of the side of the proposed structure parallel to the affected property line(s) shall not exceed 10 feet. The structure shall not exceed 120 square feet in total area; and

Pt. 3) The structure measures 9'10" by 12'(less than 120 sq. ft.) with the shorter side paralleling the complainant's property line.

NOTE: Per conversation with C. Salzman, the complainant originally reported the structure as 400 sq. ft., more than three times the actual area.

3) No reasonable alternative location may be found due to special circumstances regarding the size, shape, topography, or location of the subject property or the location of legal or legally nonconforming preexisting improvements of the subject property; and

Pt. 4) The only feasible location for the structure is on our deck located in the SE corner of our lot.

- The distance between our home and the eastern property line is prohibitive as it is only 9'6".

- The deck abuts to the sport court that extends to the fence line on the west end of the property. Locating the structure on the sport court would render it useless for playing pickle ball, volleyball, badminton, etc for which it is used.

Reference EXHIBIT A, page 14 (GPS Mapping Portal of Property)

4) The modification will not create a significant negative impact on the character of nearby residential properties.

Pt. 5) The property owner to the east, Danny Todd, has been my neighbor 28 years. He has no objection to the structure location or setbacks along the rear property line adjacent to his property.

Reference EXHIBIT B, page 15 (Signed Statement from D. Todd)

Per Case Activity Log (reference b, Exhibit C, page 18) I, C. Salzman, attempted to explain to the complainant, that the person with property adjacent to the Whites property line was not complaining about the structures location. The complainant said, "the owner had intimidated him into not complaining and that he would deny that he had been bullied".

Per Case Activity Log (reference c, Exhibit C, page 18), the complainant stated, "the owner bullied all of the neighbors, everyone in the neighborhood. It is noted she was in tears explaining how this canopy was ruining her life".

Reference Photos #4-6, pages 9 and 10 (Photos from D. Todd's Yard)
NOTE: The pictures taken reflect the view from the SW corner of D. Todd's yard. D. Todd was present at the time the pictures were taken. Each picture illustrates the structure is barely visible over the fence line from his yard level view, representative of the view from complainant's property.

Pt. 6) Expert Opinion sought 12/7/11, per telecom, with a local realtor from Windermere Real Estate, Carol Parker, whom recently sold the home at 8017 126th Ave NE across from the complainant.

- In her opinion, there would be no potential for impact to property value caused by the structure to adjacent properties and it would have no negative effect on the complainant's property value.
- While standing in the middle of 126th Ave NE as we spoke, she noted the structure was virtually impossible to see from street level.
- Further, she noted the structure would have to be "looming" and/or obtrusive to have a potential negative effect on the property value, neither of which, in her opinion and 17 years of experience, were characteristics of the structure and/or its location.

Reference Photos #7-8, pages 11 and 12 (Photos from Street Level 126th Ave NE)

Pt. 7) The structure was included as part of a back yard renovation project we recently completed. The project included replacement and installation of:

- a composite deck (previously wood)
- a small retaining wall (previously rotted railroad ties), and
- a professionally installed, top of the line, full screening, stained cedar fence (previously peek-a-boo cedar plank fence).

Each of these improvements provide a POSITIVE impact on the nearby residences, including the complainant, who are beneficiaries of a beautiful new 80+ foot fence running along our southern property line.

The structure is not "looming" or obtrusive. It is brown in color, simple in design, and made of a durable, rust proof, aluminum frame with a lightweight polycarbonate roof that two people can lift, if necessary.

If approved, the Planning Official may require the storage shed to be screened by a solid screening fence or dense vegetation.

Pt. 8) If screening remains an issue, we are more than willing to pay for a professionally designed and installed trellis between our property and the complainant. We verified with the Planning Department that this would be feasible, if agreeable by the complainant.

SUMMARY

Per the points we presented specific to each code requirement, including the supporting documentation and testimony, we believe we have provided sufficient facts to support our case and justify the City to grant a modification to the Code regarding this case.

- The Case Activity Log clearly illustrates that we have been more than cooperative, forthcoming, and cordial, closely complying with all City requests and direction throughout the entire process.
- The complaint filed is unreasonable and clearly not in the "spirit" of the language specified within the code.
- The complainant has misrepresented, on numerous occasion, the facts related to her complaint and demonstrated she will harass those that do not conform to her views.
- Additionally, if approved by the Planning Official, we will resolve any remaining view issue, per code, by providing additional screening for the area the structure is visible by the complainant in the SE corner of our property to allow final closure to this case.

OTHER ITEMS TO NOTE-Case Activity Log

In researching the events of our case...

- a) The City of Kirkland follows a standard process, in place for many years, to respond to complaints issued by residents concerning city code violations.
 - The City indicated, throughout the process, that we were following all City Code requirements that were communicated to us every step of the way.
- b) Per the City's process, this case was reviewed against the code, investigated visually and with interviews, and corrective actions implemented, *"I (Brian) was informed on September 13th "that the canopy has to be moved five feet from the South fence and THEN THE CASE WILL BE CLOSED"*, that ultimately concluded with closure of case per the process.
 - September 20th, confirmation noted in the Case Activity Log that *"the canopy has been moved over five feet from the side property line, took pictures, CASE CLOSED"*.
- c) For unknown reasons, the standard complaint resolution process and previous case outcome were rejected and the case was "re-opened" with a NOTICE OF CIVIL VIOLATION delivered three weeks later, the weekend of October 14-16 without prior notification or opportunity to understand the circumstances that would cause this abrupt change in the case.
 - Please note that the NOCV dates the violation September 20th, the same day that my compliance was noted and the case was closed. How is it possible that both events could occur the same day?
- d) Why was the "compliance noted/case closed decision" suddenly reversed on September 30th?
 - Is it a coincidence that the complainant received word of the case closed on the 29th and her reactions to the outcome caused the City to choose to relinquish and reverse their decision rather than hold their position per the process to avoid further difficulties and confrontations with the complainant?
 - The Case Activity log entries for 9/29 reveal why it was necessary for Mr. Salzman to file a protection order against the complainant.
 - Was the fact that City officials were inundated with emails, phone calls, and personal visits per cross examination of C. Salzman/Nancy Cox, for well over a month from the complainant regarding this case, a direct influence on this case being re-opened?

(CASE #COM11-00230 ENF 11-206)

PHOTOS

- 1-3 These photos were taken from our back yard.

- 4-6 These photos most closely represent the view the complainant is upset about. They were taken from my adjacent (to the east) neighbor's yard. They are the most representative I can provide as I was not about to trespass and obtain photos from her yard.

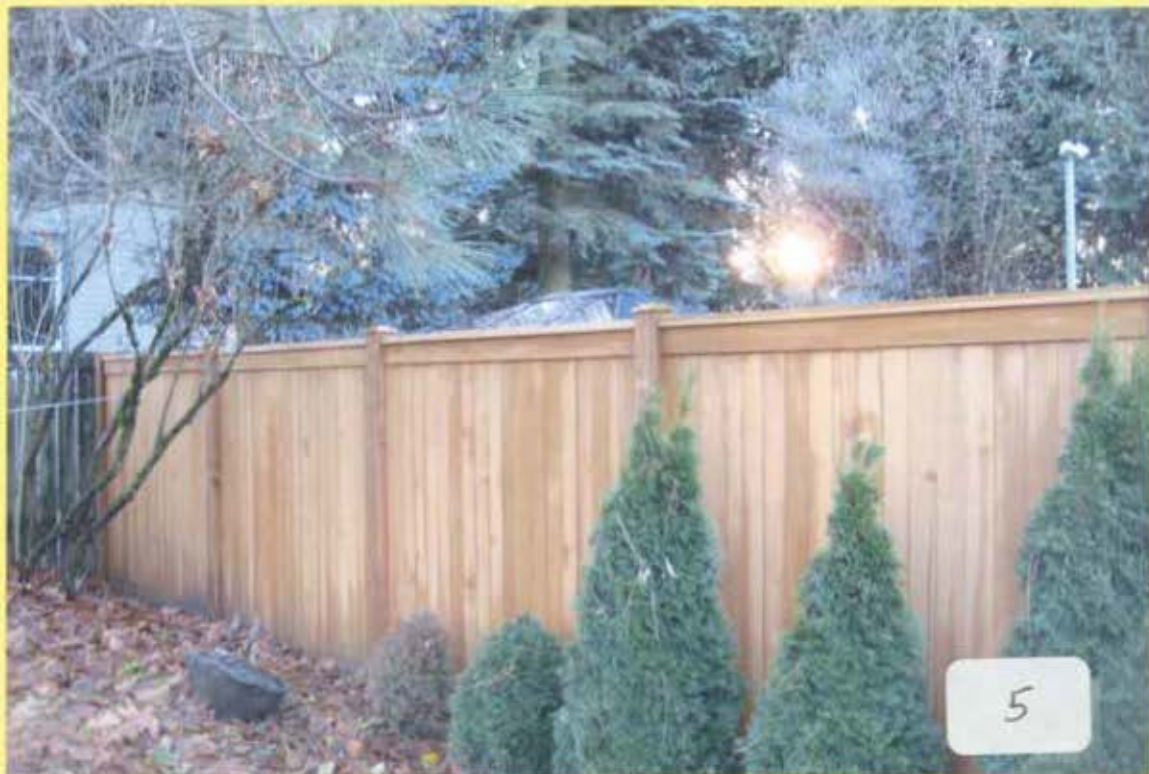
- 7-9 These photos were taken from the street in front of complainant's house. You must look hard to see the structure at all.



NATURAL
SCREENING













City Of Kirkland
123 Fifth Avenue
Kirkland, Washington 98033
Attn: Hearing Examiner

Date: December 10th, 2011

RE: White Code Enforcement Case #ENF11-206

CC: Eric Shields, Nancy Cox, Craig Salzmann, **Scott Guter**



Dear Hearing Examiner,

Unfortunately, due the travel demands of my employment I may be unable to attend the White Code enforcement hearing Case #ENF-11-206 scheduled for December 15th, 2011. However, I am very interested in the outcome of the hearing, and offer the below with regards to the above-referenced Code Enforcement matter;

1. Statement of Facts

My name is Yvonne Grossrieder, and I currently reside at 8016 126th Ave NE, Kirkland Washington 98033. I have lived at this residence for 8 years, and am the Owner of the property. My home is a landmark home built in 1908, as one of the first homestead houses on South Rose Hill. The original owner of my home was Doug Benson who in 1945 bought the property Rose Hill Elementary is located on, and sold the land to the school district in 1949 for the purpose of the building the school. The home was originally built on 26 acres of property, and has historical significance in the development of the City of Kirkland. I am in the process of restoring the home, and have spent nearly \$100,000 on the home's restoration thus far.

My home is located adjacent to Brian and Leanne White, who reside at 8028 126th Ave NE, Kirkland Washington. There is Code Enforcement Hearing (Case #ENF11-206) scheduled with the Whites and the City of Kirkland on December 15th, 2011, regarding a large 10' x 10' x 12' metal Gazebo the Whites have erected on the Southeast corner of their property within the back yard zoning setback. The Gazebo is constructed of an aluminum frame, has a polycarbonate roof, and four legs with large bolt holes in the bottom of each leg. There are lights around the Gazebo roofline. As noted in the notes by the City of Kirkland, on August 25th, 2011 the Whites indicated they bought the structure at Costco (see below from City of Kirkland Code Enforcement notes).

The Gazebo is located on top of a new 4 inch deck, but is not currently attached. It is held down by large concrete blocks the Whites have placed on the four legs over the bolt holes. The Gazebo is not in conformance of the rear yard setback requirement of 10 ft. (Kirkland Zoning Code (KZC) 15.1 – Low Density Residential) for Zone RSX 7.2. The Gazebo is 2 ft. from the White's back property line, and thus in violation of the KZC 115.15 by 8 ft. It is also 3 ft. 4 inches above the 9 ft. combined fence, deck and retaining wall. **See Exhibit A.**

The combined fence and retaining wall height is 9 ft. as a result of a modification granted by the City of Kirkland on January 27th, 2011 **See Exhibit J.** As the Gazebo sits on top of the 4 inch deck, the result is that the Gazebo is 3 ft. 4 inches above the combined fence, deck and retaining wall. **See Exhibit B.**

2. Intentional Disregard of the Zoning Code

In December 2010 (1 year ago), the Whites began construction of a large cement retaining wall, new deck, fence, and permanent wood structure on the Southeast corner of their property. The permanent wood structure was noticed by me as the wood posts for the roof extended significantly above the old existing 6 ft. fence. The structure under construction was 2 ft. from the side yard boundary line and 2 ft. from the back yard boundary line of the White's property. As such, it was not in conformance of the KZC 115.15 for Low Density Residential (which requires a 5 ft. setback from the side yard and a 10 ft. setback from the back yard). The KZC nonconformance was a 3 ft. violation on the side yard and an 8 ft. violation on the backyard.

In late December, I contacted Danny Todd, the other adjoining neighbor to the White's property, regarding his intention to grant the Whites a variance to the setback requirements. He stated he had not spoken to the White's in over two years, as they had a significant disagreement regarding his boat being parked on the street on the side yard of the White property. In addition, he stated he would not give the Whites a variance because he felt it would devalue his property.

The City's Code Enforcement Officer confirmed with Scott Guter, from the City of Kirkland Planning Department that the Whites could not build the structure within the setback, as it is not in conformance of **KZC 115.115.3.c Required Yards**;

"KZC 115.115 Required Yards;

3. Structures and Improvements – No improvement or structure may be in a required yard except as follows:"

This was communicated by the City to the Whites on January 27th 2011 as part of the fence, deck, retaining wall height modification granted by the City see **Exhibit J**. In the modification, it was made clear to the White's they could not build a structure within the setback. The Whites then cut the posts originally intended for the permanent structure and finished construction of the fence, retaining wall and deck. My first Complaint (#10-00274) was closed in February 2011.

In mid-August 2011 (only 6 months later), the Whites purchased a Gazebo from Costco and erected it 2 ft. from the side yard boundary line and 2 ft. from the back yard boundary line on the Southeast corner of their property. On August 22nd, 2011, I field a second complaint (#11-00230) with the City of Kirkland requesting a second request for enforcement of the setback requirements. The Whites had full knowledge of the Zoning code requirements when they purchased the Gazebo from Costco, and purchased it with an intentional disregard of the code and with an intent to violate it.

3. Zoning Code Chapter 120

- i. Zoning Code Chapter 120 sets forth the mechanism whereby a provision of the Code may be varied on a case-by-case basis if the application of the provision would result in an unusual and unreasonable hardship.
- ii. Zoning Code section 120.20 establishes the decisional criteria with which a variance request must comply in order to be granted.
- iii. **Conclusion:** The Whites have not filed for such a variance as the code dictates, and as such have not met the minimum requirement to be granted a variance.

4. **Zoning Code 115.115. m.** The below section of the Zoning code notes the requirements necessary to allow modification for one storage shed in a required yard. I will address this section of the code in below.

"For uses in low density residential zones, and for residential uses in other zones, the applicant may request a modification to locate no more than one (1) storage shed in a required yard; provided, that no storage sheds are allowed in a required front yard. The Planning Official may approve a modification if:

The proposed structure is no more than eight (8) feet tall; and

The maximum length of the side of the proposed structure parallel to the affected property line(s) shall not exceed 10 feet. The structure shall not exceed 120 square feet in total area; and

No reasonable alternative location may be found due to special circumstances regarding the size, shape, topography, or location of the subject property or the location of legal or legally nonconforming preexisting improvements of the subject property; and

The modification will not create a significant negative impact on the character of nearby residential properties.

If approved, the Planning Official may require the storage shed to be screened by a solid screening fence or dense vegetation."

A. The structure is not a Storage Shed; it is Sun Shelter/Gazebo, and a Structure/Building Intended as Inhabited Space

- i. On August 25th, 2011 Hans Galvin of the City of Kirkland building department called the Whites regarding the nature of the structure, as a permit for structures is required as part of the building code. The Whites indicated that they had erected a storage/tool shed. The City of Kirkland noted that a storage/tool shed did not require a building permit. See City of Kirkland Code Enforcement Notes;

8/25/2011 HKG	8/25/11 hkg - No Building Permit Required - Spoke with homeowner on the telephone at 9:15 AM this morning to discuss this complaint. Homeowner explained that the structure is a 10ft x 12ft metal storage/tool shed that he purchased at Costco and recalled from prior complaint that this was not a structure that requires a permit. I informed homeowner that he is indeed correct, a building permit is not required but he needs to check with Planning regarding any setback requirements that may be applicable. I said that this complaint will also be routed to Planning Enforcement and they will most likely be calling him soon. Homeowner gave me a cel phone number which I added to the contact list.
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The structure the Whites have erected on their property was sold by Costco as a Sun Shelter/Gazebo at an est. cost of \$900. See **Exhibit C** from Costco Home Website.

The manufacturer of the Sun Shelter/Gazebo sold by Costco is the Canadian company SOJAG Inc. Sojag is a manufacturer of Sun Shelters and Gazebos and is located in Montreal, Quebec. SoJag sells this Sun Shelter/Gazebo exclusively to Costco in the US. See **Exhibit D** for SoJag Website. Both the distributor and manufacturer sell the structure the Whites erected as a Sun Shelter/Gazebo. The product is not sold by either the manufacturer or the distributor as storage/tool shed.

In addition, on September 7th, 2011 the Whites themselves said the structure was a sun shelter – not a tool shed. See City of Kirkland Code enforcement notes below.

CES	9/7/2011	spoke with the owner, this is a sunshelter and is portable. I told him
	CES	

- ii. The definition of a Structure and Building in KZC 5.10 Definitions is noted as follows;

"910 Structure – Anything which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

090 Building – A roofed structure used for or intended for human occupancy"

The Whites Gazebo is a piece of work artificially built up or constructed; it is an edifice and composed of parts joined together in a definite matter. In addition, the Whites placed a barbeque, picnic table and picnic benches under the structure. See **Exhibit E**. As such, the White's Gazebo is used for and/or intended as

inhabited space. In conclusion, the Whites Gazebo is both a Structure and Building as defined by the KZC 5.10.

The City of Kirkland Building Department has noted the standard for safety and location of inhabited structures is higher than non-inhabited structures (such as tool sheds) and all structures regardless of their types are required to comply with the law including the Zoning code and the setbacks requirements.

Further, the Zoning code does not distinguish between a permanent and impermanent structure. However even if a distinction were made, the manufactures clearly intended the Gazebo as a permanent structure as noted by the large bolt holes on the bottom of each of the four legs. In addition, any argument made that the Gazebo is impermanent would be derived entirely from the Whites stated intent to remove it at some time in the future. When this might occur is left to speculation. Intent to remove a structure at some indefinite future moment does not make the structure temporary; if it did, virtually any structure would be outside the regulation of the code.

- iii. **Conclusion:** The Whites structure is a Sun Shelter/Gazebo as sold by the manufacturer and distributor. It is intended and/or used as inhabited space. It is a Structure and Building as defined by KZC 5.10. The standards for safety and location of inhabited structures are higher than of inhabited structures. It is not a storage shed, and thus does not qualify for modification under Zoning Code 115.115. m

B. Modification Requirement 1: The proposed structure is no more than eight (8) feet tall; and

- i. **Conclusion:** The code is very clear, definite and intentional on the maximum height allowed for modification approval. The White's Gazebo is 12 feet tall (as noted by the Whites in the Code Enforcement Notes above and by the distributor Costco – **Exhibit B**). As such, the White's Gazebo is 4 feet taller than the 8 foot maximum allowed for modification; hence the Whites structure is not eligible for modification approval.

C. Modification Requirement 3: No reasonable alternative location may be found due to special circumstances regarding the size, shape, topography, or location of the subject property or the location of legal or legally nonconforming preexisting improvements of the subject property; and

- i. The Whites own a large lot which measure 10,322 sq. ft. / 0.24 acres, and their home occupies 2,810 sq. ft. The Gazebo can be located *in a minimum* of two alternative areas on the property, and still be in conformance of the City of Kirkland's Zoning code without impacting adjoining neighbors;
 - 1) The Gazebo could be located on the North side of the property, where there is plenty of space to meet setback requirements and there is no neighbor on this side of the property. There is ~25 ft. between the White property line and the their house, so locating the 10 ft. Gazebo in this area leaves a 15 ft. buffer from the street. The required side yard setback is only 5 ft. **See Exhibit F & G.**
 - 2) The Gazebo could also be located on the West side of the property, as there is ~38 ft. between the street and the White's house. Locating the 10 ft. Gazebo in this area leaves 28 ft. to the street, with ample distance for the required front yard setback of 20 ft. **See Exhibit F & G.**

Regardless of whether the Whites note the North or the West side of their property as a front yard, one of the sides must be the side yard and there is 5 ft. of setback available in either location above. Denying the modification would not prevent the Whites from reasonably using the Gazebo on their property.

- ii. **Conclusion:** The modification is not necessary because of special circumstances regarding the size, shape, topography or location of the Gazebo, or the location of preexisting improvements on the Whites property.

D. Modification Requirement 4: The modification will not create a significant negative impact on the character of nearby residential properties.

- i. The main floor of my home sits 4 ft. 9 inches above the ground, as there is a bedroom/den below the main floor which is sub ground. My house is uphill from the White's property on South Rose Hill and sits higher than the White's property due to the grad of the hill. The current location of the White's Gazebo is directly below my Master Bedroom and is in full view from my; 1.) Dining Room, 2.) Entry Way, 3.) Main Living room, 4.) Front Porch and 5.) Back Porch on the North side of my property. My Master Bedroom has four windows on the North side, my Living room has two large windows on the North side, the second bedroom has one window on the North side, and the third bedroom/den below the main floor also has a window on the North side. As such, there are eight (8) windows on the north side of my home, directly opposite the current location of the White's Gazebo. **See Exhibit H.** As the Gazebo rises 3 ft. 4 inches above the combined 9 ft. fence, deck and retaining wall, it is visible from the primary living spaces of my property. **See Exhibit I.** As the entryway is the "window" to what a future owner or guest may envision as they enter my home, my entry way and front porch are of significant importance to the overall setting of the home. The Gazebo distracts from the serenity and beauty of the overall setting of this landmark home. In addition, since my home has eight (8) windows on the north side directly opposite the current location of the White's Gazebo, and the Gazebo is an inhabited structure; there is an obvious negative noise impact to placing the structure in the setback. The Whites frequently entertain guests, and the noise impact is substantial. The Gazebo clearly has tangible and negative impact to my privacy, a visual and noise impact, and the property value of my landmark home.
- ii. As noted in the **City of Kirkland's Comprehensive Plan, Appendix C: Design Principles, Residential,** **"Building setbacks establish a pattern ... and provide a semi-private space for residents. The setbacks of residence ...create a rhythm, which adds to the atmosphere... it will provide a buffer zone for the residents ...if the building is set too close ...it can disrupt this buffer zone.... The size and location of an accessory structure such as an accessory dwelling unit, detached garage or storage shed, and the location ... can determine the extent the structure will impact the neighborhood."**

The Comprehensive Plan of the City lists the goals and policies regarding land use within the City of Kirkland. This is clearly why we have setbacks established by the City of Kirkland, and highlights the legislative intent of the Zoning code. Setbacks protect us as individual homeowners and help to beautify our community. The setback requirements help to make structures more unobtrusive and consistent with the character of the neighborhood. In violating the setback requirements, the Whites Gazebo has a detrimental impact to the character of the low density residential neighborhood

- iii. **Conclusion:** The variance would be materially detrimental to the adjacent historical property and the overall character of the neighborhood.

E. In addition, the variance would constitute a grant of special privilege to the Whites which is inconsistent with the general rights that this Code allows for other properties in the same area and zone as the subject property.

- i. The Whites Gazebo is a matter of convenience solely benefitting the White's interest. As noted in the previous sections, there are two alternative areas on the property the Gazebo could be located and thus it is not necessary that the Gazebo be located in the setback. The Gazebo's nonconformance with the zoning code removes the buffer zone between structures and detracts from character of the low density residential neighborhood surrounding it. This noncompliance has a tangible and negative impact to my privacy and resultant property value. Other residential properties in the same area and zone do not allow inhabited structures within the setbacks. As a member of the community, I would like the zoning code enforced as a general right, and request protection of the right to privacy, quiet enjoyment of my property, property value and maintenance of the character of the low density residential neighborhood.

5.) 150.50 Burden of Proof

"The applicant has the responsibility of convincing the Hearing Examiner that, under the provisions of this chapter, the applicant is entitled to the requested decision"

- i. Finally, it is the White's responsibility to show that all of the modification criteria under KZC 115.115 Required Yards have not been violated. I have spent the past year and numerous hours understanding the zoning code, working with the City as required by the Code, and dealing with the White's issue. I have gone above and beyond what is required to ensure my rights as a property owner are maintained, as the burden of proof legally lies with the White's.

6.) Final Conclusion

The White's Gazebo is 2 ft. from the back property line, and 3 ft. 4 inches above the combined 9 ft. fence, deck and retaining wall, and is in nonconformance with the City's Zoning code KZC 115.15 by 8 ft.

The Whites have exemplified an intentional disregard for the law, as they have full knowledge of the zoning code when they purchased the structure from Costco.

The Whites **have not** requested a variance to the Zoning Code under Chapter 120.

The Whites' **have not** met the criteria for modification under Zoning Code 115.115.m as;

1. The structure is not a storage shed; it is a Sun Shelter/Gazebo as sold by the distributor and manufacturer and as stated by the Whites themselves. The Gazebo is also a structure/building intended as an inhabited structure. The standard for safety and location of inhabited structures is higher than non-inhabited structures such as storage sheds. Any structure or building is required to comply with the Zoning Code.
2. The Gazebo is 12 feet tall, and is 4 feet taller than the 8 foot maximum allowed for modification. It is therefore not eligible for modification.
3. There are a minimum of two alternative locations in which the Gazebo could be located and be in conformance with the Zoning Code. As a result, it is **not** necessary the Gazebo we placed in the setback because of special circumstances regarding the size, shape, topography or location.
4. The current location has a significant negative impact on the adjacent property as well as the character of the neighborhood.
5. The modification would constitute a grant of special privilege to the Whites which is inconsistent with the general rights that the Code allows for other properties in the same area and zone.

Lastly, the responsibility lies with the Whites to prove the modification criteria have not been violated. As a member of the community and property owner, I look to the Hearing Examiner to protect both my and the communities rights to privacy, quiet enjoyment, property value and maintenance of the character of the neighborhood by enforcing the Whites code infraction.



Yvonne Grossrieder
8016 126th Ave NE
Kirkland, Wash. 98033
425-889-0168 (cell)

EXHIBITS

Exhibit A: The Gazebo is 2 ft. from the White property line, and thus in violation of the KMC 115.15. It is also 3 ft. 4 inches above the combined fence, deck and retaining wall of 9 feet.



Exhibit B: The combined fence and retaining wall height is 9 ft. as a result of a modification granted by the City of Kirkland on January 27th, 2011 **See Exhibit J.** As the structure sits on top of the 4 inch deck, the result is that the Gazebo is 3 ft. 4 inches above the combined fence, deck and retaining wall.

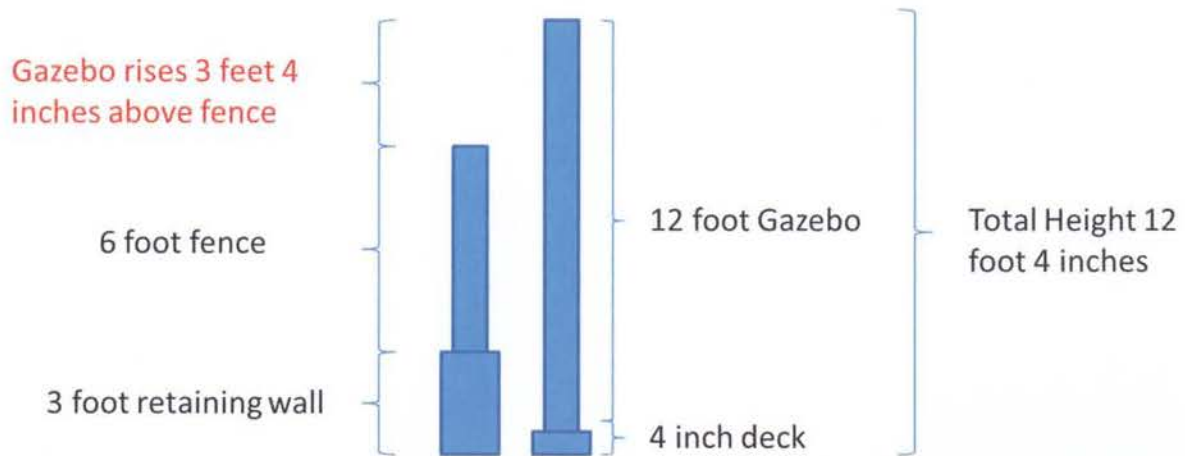
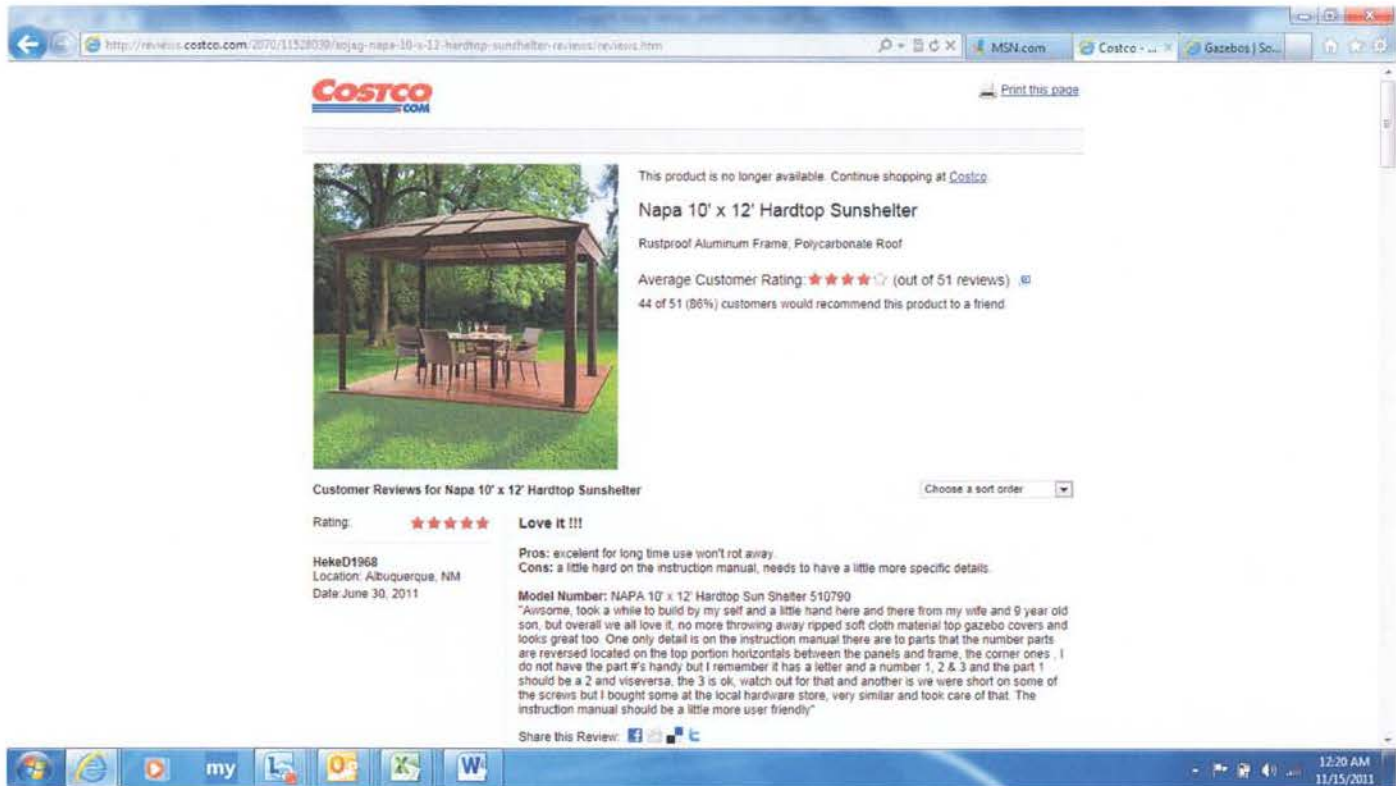


Exhibit C: Sold by Costco as a Sun Shelter: URL: <http://reviews.costco.com/2070/11528039/sojag-napa-10-x-12-hardtop-sunshelter-reviews/reviews.htm>



Costco

This product is no longer available. Continue shopping at [Costco](#)

Napa 10' x 12' Hardtop Sunshelter

Rustproof Aluminum Frame, Polycarbonate Roof

Average Customer Rating: ★★★★★ (out of 51 reviews)

44 of 51 (86%) customers would recommend this product to a friend

Customer Reviews for Napa 10' x 12' Hardtop Sunshelter

Rating: ★★★★★

Love it !!!

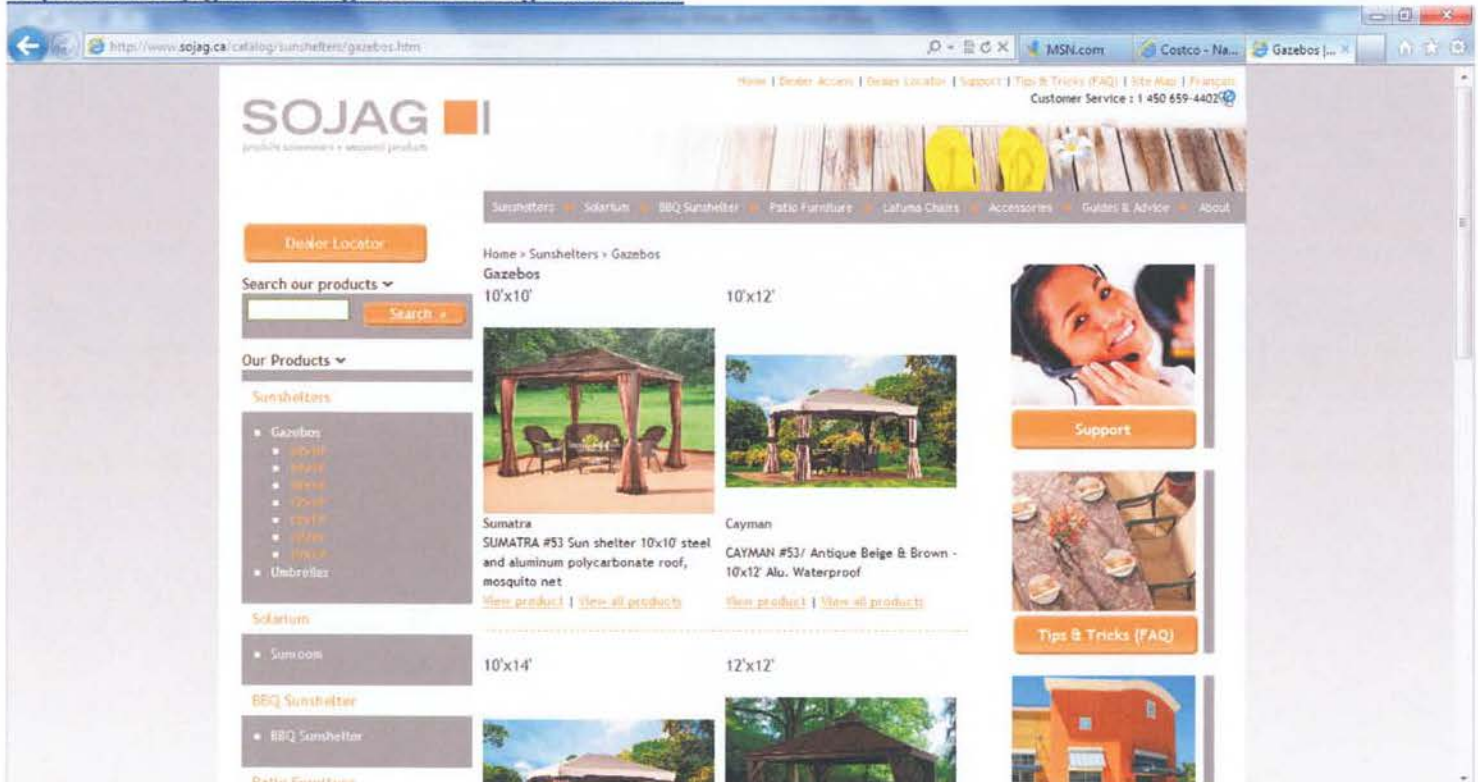
HekeD1968
Location: Albuquerque, NM
Date: June 30, 2011


Pros: excellent for long time use won't rot away.
Cons: a little hard on the instruction manual, needs to have a little more specific details.

Model Number: NAPA 10' x 12' Hardtop Sun Shelter 510790
"Awesome, took a while to build by my self and a little hand here and there from my wife and 9 year old son, but overall we all love it. no more throwing away ripped soft cloth material top gazebo covers and looks great too. One only detail is on the instruction manual there are to parts that the number parts are reversed located on the top portion horizontals between the panels and frame, the corner ones. I do not have the part #'s handy but I remember it has a letter and a number 1, 2 & 3 and the part 1 should be a 2 and viceversa, the 3 is ok, watch out for that and another is we were short on some of the screws but I bought some at the local hardware store, very similar and took care of that. The instruction manual should be a little more user friendly"

Share this Review: [Facebook](#) [Twitter](#) [LinkedIn](#)

Exhibit D: Sold by the Manufacturer SoJag as a Gazebo: URL: <http://www.sojag.ca/catalog/sunshelters/gazebos.htm>



SOJAG 

producing accessories • seasonal products

Home | Dealer Access | Dealer Location | Support | Tips & Tricks (FAQ) | Site Map | Français
Customer Service: 1 450 659-4402

Sunshelters • Solariums • BBQ Sunshelter • Patio Furniture • Lafuma Chairs • Accessories • Guides & Advice • About

Dealer Locator

Search our products ▼

Our Products ▼

Sunshelters

- Gazebos
 - 10'x10'
 - 10'x12'
 - 10'x14'
 - 12'x12'
 - 12'x14'
 - 14'x14'
 - 16'x16'
 - 18'x18'
 - 20'x20'
 - 24'x24'
 - 28'x28'
 - 32'x32'
 - 36'x36'
 - 40'x40'
 - 44'x44'
 - 48'x48'
 - 52'x52'
 - 56'x56'
 - 60'x60'
 - 64'x64'
 - 68'x68'
 - 72'x72'
 - 76'x76'
 - 80'x80'
 - 84'x84'
 - 88'x88'
 - 92'x92'
 - 96'x96'
 - 100'x100'
- Umbrellas

Solariums

- Sunroom


BBQ Sunshelter

- BBQ Sunshelter

Patio Furniture


Home » Sunshelters » Gazebos

10'x10'




Sumatra
SUMATRA #53 Sun shelter 10'x10' steel and aluminum polycarbonate roof, mosquito net
[View product](#) | [View all products](#)

10'x12'




Cayman
CAYMAN #53/ Antique Beige & Brown - 10'x12' Alu. Waterproof
[View product](#) | [View all products](#)

10'x14'



12'x12'



Support

Tips & Tricks (FAQ)

Exhibit E: The Whites placed a barbeque and picnic benches under the Gazebo. Structure intended as inhabited space.



Exhibit F: Two other available locations for Gazebo – See Red squares. NOTE: This map was generated from a geographic information system at an approximate scale of 1" = 30'.



Exhibit G: Alternative locations for the Gazebo on the Whites property

Alternative 1: North Side of 8028 126th Ave NE – Red Square is potential alternative location



Potential Alternative Location for Gazebo

Alternative 2: Northwest side of 8028 126th Ave NE - Red Square is potential alternative location



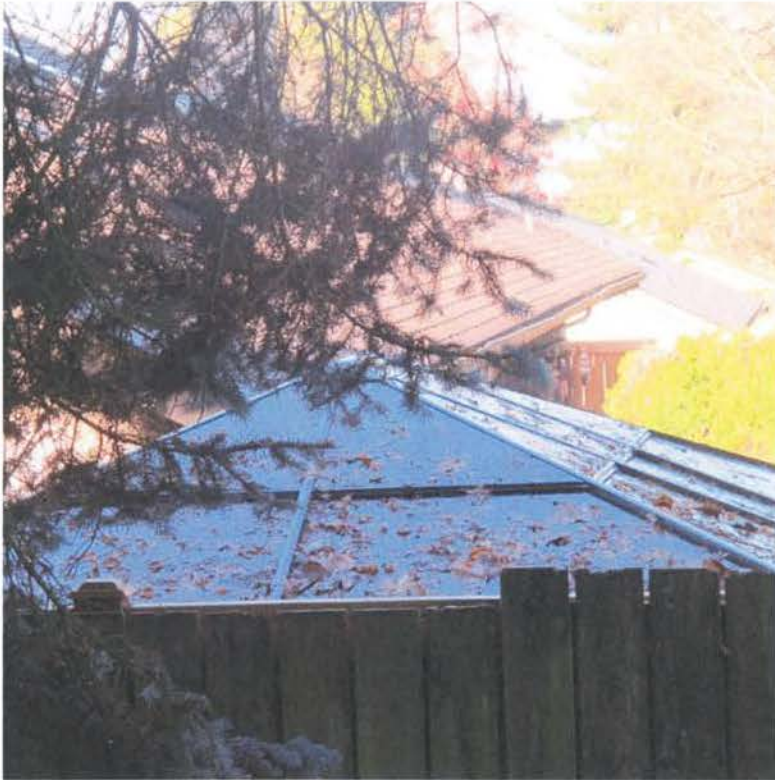
Potential Alternative Location for Gazebo

Exhibit H: North side of 8016 126th Ave NE Kirkland, Washington. The main floor of the house sits ~4.5 ft. above the ground. The Master Bedroom has four windows on the north side (one not shown in the first picture as it is obstructed by the fireplace – see second picture), the Living room has two large windows on the north side, the second bedroom has one window on the north side, and the third bedroom/den also has a window (not shown in either photo). As such, there are eight (8) windows on the north side of my house, directly opposite the current location of the White's Gazebo.



Exhibit I: As the Gazebo rises 3 ft. 4 inches above the combined 9 ft. fence, deck and retaining wall, it is visible from the primary living spaces of my property.

View from **Main Living Room** of First Window: 8016 126th Ave NE, Kirkland Wash.



View from **Main Living Room** of Second Window: 8016 126th Ave NE, Kirkland Wash.



View from **Master Bedroom** of 8016 126th Ave NE, Kirkland Wash.

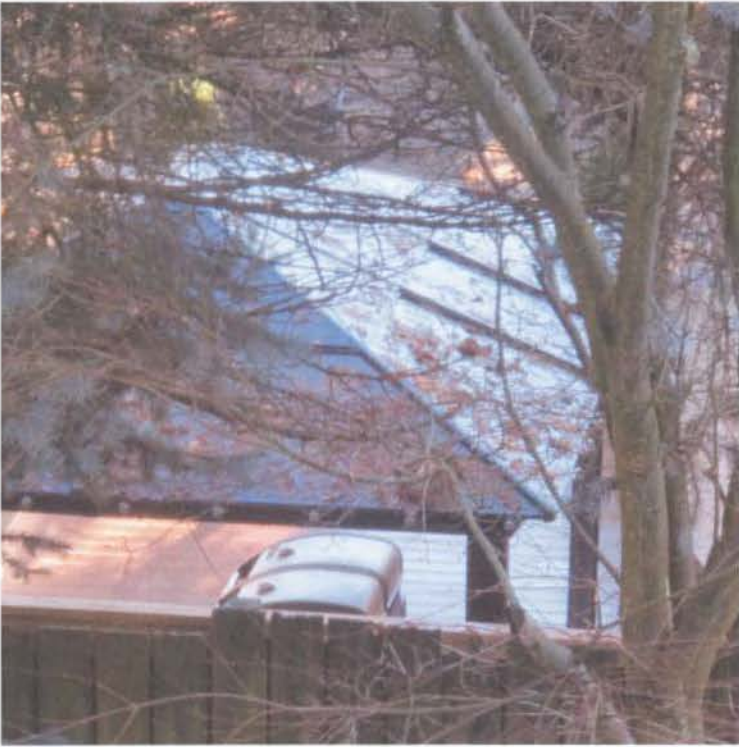


Exhibit J: City of Kirkland: Fence, Deck, and Retaining Wall Replacement – Modification for 9 ft. combined Fence, deck and Retaining Wall.

**CITY OF KIRKLAND**

Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033 425.587-3225
www.ci.kirkland.wa.us

January 27, 2011

Brian & LeAnn White
8028 126th Ave. NE
Kirkland, WA 98033

SUBJECT: Fence, Deck and Retaining Wall Replacements (ENF 10-220)

BACKGROUND DISCUSSION

Per registered complaint ENF 10-220 involving development activity related to replacement of an existing retaining wall, fence, and covered deck I have conducted the following analysis and findings of applicable zoning regulations.

ANALYSISDeck

The enforcement case reported a covered deck under construction at the time of the complaint. The subject property is located within the single-family residential zone RSX. Based on the location of existing improvements the respective required yard setback for all structures on the property (not exempt under Kirkland Zoning Code (KZC) Section 115.115) are 20 feet from the north property line, 10 feet from the south property line, and 5 feet for both the east and west property lines. The location of a covered deck at the property line would be a violation of these provisions.

Your submitted letter and photos suggests a proposed uncovered replacement deck (see Attachment 1 & 2). This structure would be allowed within the required yard provided that it is not more than four inches above finished grade (KZC 115.115(3)(b)).

Fence & Retaining Wall

The complaint also referenced the replacement of an existing combined retaining wall and fence. Under KZC 115.115(3)(g)(2) the combined height of fences and retaining walls within five feet of each other in a required yard may be a maximum of six feet. The existing combined retaining wall and fence is nine feet at its maximum height; therefore, does not conform to code and will require a modification (see criteria below).

NOTE: The fence regulations will allow a six foot high fence along your south property line. This fence may extend along the east and west property line until twenty feet from the north property line where it must be reduced to 3 ½ feet.

Combined Retaining Wall and Fence Modification Criteria (KZC 115.115(3)(g)(2))

The Planning Official may approve a modification to the combined height limit for fences and retaining walls if:

- a) An open guard railing is required by the Building Code and the height of the guard railing does not exceed the minimum required; or
- b) The modification is necessary because of the size, configuration, topography or location of the subject property, and either:
 - i. The design of the rockery or retaining wall includes terraces deep enough to incorporate vegetation or other techniques that reduce the visual mass of the wall, and the fence is designed to be no more than 50 percent solid; or
 - ii. The modification will not have any substantial detrimental effect on abutting properties or the City as a whole.

FINDINGS

I have determined that the existing and proposed retaining wall and fence meets modification criteria KZC 115.115(3)(g)(2)(b) and possess no substantial detrimental effect of the abutting properties since from the abutting properties the only visible mass will be a 6 ft. high fence. Therefore, I have approved this modification for the structures along a portion of the east and south property lines as indicated by the submitted site plan (see Attachment 3). As a condition of this approval the retaining wall and fence cannot increase in height from the original structures, which was indicated by submitted photos as having a maximum height of 9 feet, with a 3 ft. retaining wall plus a 6ft. fence. If the existing structure is less than 9 feet in combined height at any point the replacement will not exceed this height.

This approved modification is not an approved building permit. It has been indicated by the Building Department that this combined structure may require a permit. Please contact Hans Galvin at 425-587-3621 prior to construction.

If you have any questions or require additional clarification on any of the items contained in this letter, please feel free to contact me at 425-587-3247.

Sincerely,



Scott Guter
DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

cc:

ENF 10-220, COM10-00274
Parcel Data File: 8028 126 Ave. NE

Attachments:

1. White Letter
2. Site Plan
3. Photos

January 12, 2011

To: City of Kirkland Planning Department

Subject: Fence, Deck, and Retaining Wall Replacements

Reference: Case #ENF-10-220 dated 12/24/10

RECEIVED

JAN 13 2011

AM
PLANNING DEPARTMENT PM

BY _____

After 28 years as the original owner of this Kirkland residence, I need to replace my deck, fence, and retaining wall. They have served me well but time has taken its toll and they all are in dire need of replacing. There will be no change to the configuration or size of any of these but a few words on each hopefull answer any questions you may have.

Deck

I had hoped to add a small shelter (PHOTO EXHIBIT J) on the deck but was informed I did not have the necessary setbacks to do so. Therefore, I will simply be redecking with new material and keeping the exact footprint of the previous deck. SEE PHOTO EXHIBITS K & L.

Fence

I plan on replacing the existing leaning and deteriorating fence (SEE PHOTO EXHIBITS O, P, Q, and R) with a slightly different style of fence. The location, length and height (6 foot) will not change. I understand a modification or variance may be required for the height because it will sit adjacent to the three foot cement retaining wall. (SEE PHOTO EXHIBIT C). Due to the grade difference between my property and my neighbor's (PHOTO EXHIBITS G, H, and I), this is the only height that makes sense.....see PHOTO EXHIBITS A, B, D, E and F.

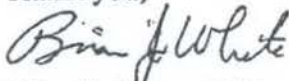
Retaining Wall

The previous retaining wall used railroad ties which finally rotted out after all these years. To avoid this problem, I will use concrete (finished with stone) this time. I will also have several small lights inserted in the wall with the understanding an electrical permit will probably be necessary. Other than that, the length of the wall will be the same as before and perhaps an inch or two thicker. SEE PHOTO EXHIBITS M & N.

Conclusion

As PHOTO EXHIBITS S & T demonstrate, I really take pride in my home ownership and look forward to working with the City in completing the restoration to my back yard. I also want to be good neighbor and I apologize for not getting permits prior to starting the project but honestly didn't think we would need them for this sort of replacement project. I hope I have explained everything well enough so we can proceed but invite you to come to the site and see for yourself if you have further questions.

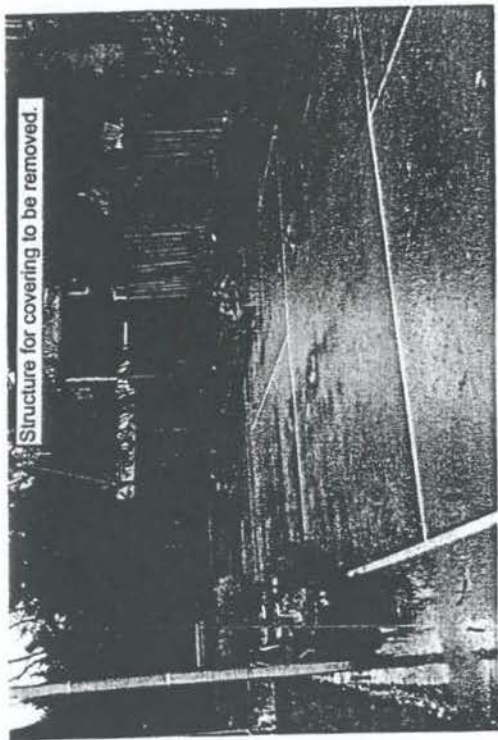
Thank you,



Brian & LeAnn White
8028 126th Ave. NE
Kirkland, WA 98033

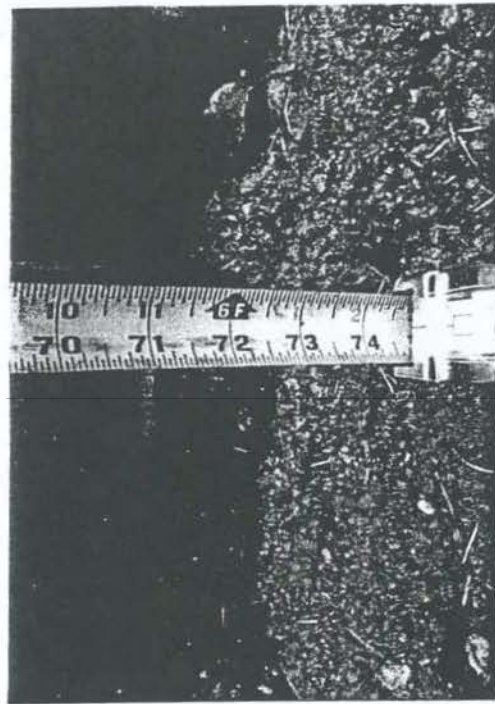
425-827-0156
425-894-0653(cell)

ATTACHMENT 1



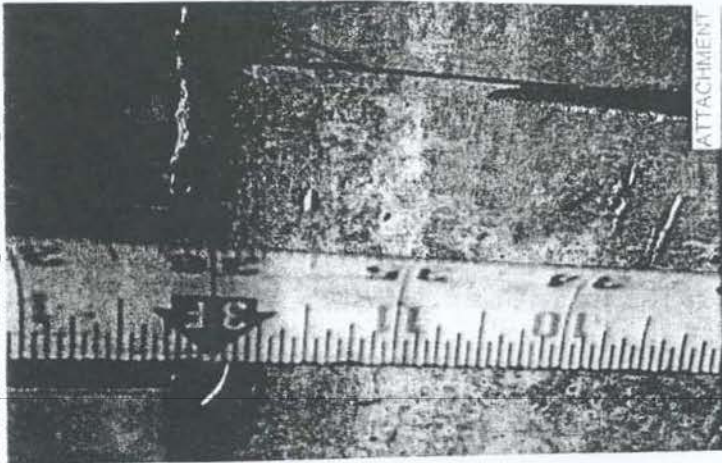
Structure for covering to be removed.

Photo of southeast portion of deck, retaining wall, and fence.



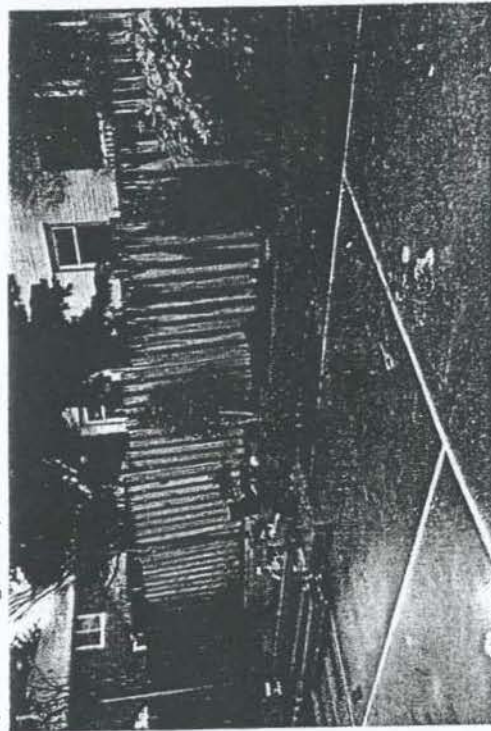
Maximum fence height (6'-0")

Maximum retaining wall height (3'-0")



ATTACHMENT

Photos of southeast portion of deck, retaining wall, and fence.



Deck will be a maximum of four inches above finished grade when complete

